



Planning Proposal

Amendment to Local Environmental Plan

PROPOSED AMENDMENT TO THE KYOGLE LOCAL ENVIRONMENTAL PLAN 2012
Amendment No. 4 – Rural Tourist Accommodation

10 August 2015

Introduction

Overview

This Planning Proposal explains the intended effect and justification for the proposed amendment to the *Kyogle Local Environmental Plan 2012* (KLEP) – i.e. referred to as the LEP Amendment. The amendment has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant Department of Planning and Environment guidelines including *A guide to preparing planning proposals, 2012* (the Guideline).

The Council at its Ordinary Meeting of 13 July 2015 resolved to prepare an amendment to its KLEP to:

- 1) Include farmstay accommodation, camping grounds and eco-tourist facilities as development that is permissible with development consent within the RU1 Primary Production Zone (RU1 Zone)
- 2) Increase the permissible limit of bedrooms within bed and breakfast accommodation from 3 bedrooms to 5 bedrooms
- 3) Increase the permissible limit of bedrooms within farmstay accommodation from 3 bedrooms to no more than 5 bedrooms where forming a part of the principal dwelling house and including a limit on the number of separate chalets or cabins that can be built (i.e. with development consent) of no more than 1 cabin/chalet per 10 hectares of allotment area with an overall limit of 12 bedrooms in total

The proposed LEP Amendment is expected to provide for greater economic development for the area through increased diversity in rural tourism and accommodation options. The additional forms of rural tourist accommodation that are to be permitted are ones to which the area and region are suited in terms of proximity to markets, the scenic attraction of the area and compatibility with agricultural land uses. Existing strict environmental controls that apply to all development and specific development within rural zones, including the RU1 Zone will apply to the proposed additional development to be supplemented by additional controls that are to apply to all camping grounds in the Kyogle local government area.

The proposed LEP Amendment is intended to enable the Kyogle local government area to sustainably take advantage of emerging rural tourist opportunities including; South East Queensland, overseas, 'Grey Nomads' and other visitors to the area and to provide a complimentary land use opportunities for rural properties within the area. The proposed changes to the permissibility of the identified rural tourist opportunities within the zonings and other standards regarding scale of development reflect existing provisions within LEPs of neighbouring councils. Existing controls that ensure compatibility of proposed development with other land uses (i.e. notably agriculture) and consistency with sustainable development principles in the KLEP are maintained and are to be further supported by a proposed amendment to the *Kyogle Development Control Plan 2014* (Kyogle DCP).

An increase in the permissible number of bedrooms for bed and breakfast accommodation will also enable full use of any benefits that are available through *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Exempt and Complying Development SEPP). The current KLEP limit on the number of allowable bedrooms (i.e. 3 bedrooms) is less than the maximum of 4 bedrooms that are otherwise already permitted as complying development by the Exempt and Complying Development SEPP.

The proposed LEP amendment has been the subject of a report to the Council's Ordinary Meeting of 13 July 2015 which addresses, in detail, the circumstances and benefits of the proposed amendment. A copy of the report from the Council's Ordinary Meeting Minutes is attached to this Planning Proposal (Attachment A). There are no other supplementary reports that are relied on for this Planning Proposal which has been prepared in support of a requested Gateway Determination to proceed with the proposed LEP Amendment under Section 56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)..

Preparation of Planning Proposal

The subject Planning Proposal has been prepared by the Kyogle Council and is based on the report to Council, prepared by Council officers, at its Ordinary Meeting of 13 July 2015, the Council's deliberation of the report and its unanimous Resolution to proceed with the proposed LEP Amendment (see Attachment A).

The proposed LEP Amendment, if it is to proceed, will be the 4th amendment undertaken by Kyogle Council to its KLEP.

Site Identification

The proposed LEP Amendment will apply across the whole local government area within the zones where bed and breakfast accommodation, farmstay accommodation, camping grounds and eco-tourist facilities are to be, in principle, permissible with development consent or as complying development under the provisions of the EP&A Act or the KLEP.

Existing Planning Controls

The KLEP commenced on 11 February 2012 and is in the format of the NSW Standard Instrument for LEPs. Existing planning controls that are to be affected by the proposed LEP Amendment are summarised in Table 1. There are no other provisions affected and no other new provisions proposed as part of the proposed LEP Amendment.

Table 1 Existing Planning Controls and Changes

Section of KLEP	Comment
Part 2 Permitted or prohibited development Clause 2.1 Land use zones	• There are no changes to the proposed zonings • Farmstay, camping grounds and eco-tourist facilities are to be included as development that is permitted with consent within the RU1 Zone; there are no other changes to uses that are exempt, permitted without consent, permitted with consent or prohibited for any of the zones.
Part 5 Miscellaneous provisions Clause 5.4 Controls relating to miscellaneous permissible uses	• Reference to 3 bedrooms regarding bed and breakfast accommodation in clause 5.4(1) is to be changed to 5 bedrooms subject to compliance with all other requirements of the KLEP • Clause 5.4 (5) regarding farmstay accommodation is to be changed to increase the maximum permitted number of bedrooms that is attached to the principal dwelling to 5 bedrooms and places a limit on the number of cabins or chalet-style units that can be developed (i.e. 1 per 10 hectares of total allotment area) and an overall limit of no more than 12 bedrooms regardless of any combination of attached bedrooms to the principal dwelling or separate cabins or chalet-style development.

Part 1 – Objectives and Intended Outcomes

Objectives

The objectives of the proposed amendment are to:

- 1) Better align the Council's planning controls for rural tourist accommodation with the existing complying development provisions (i.e. the state provisions already permit more bedrooms than the KLEP in many instances)
- 2) Provide for more responsive recognition of commercial requirements for the provision and operation of rural tourist accommodation opportunities in the area
- 3) Provide incentive for quality design and service delivery
- 4) Provide, in principle, for greater tourist accommodation diversity and experiences
- 5) Maintain complementary land use objectives between tourist accommodation and agricultural production opportunities
- 6) Ensure that best-practice sustainable development and environmental management practices are maintained

Intended Outcomes

The intended outcomes of the proposed amendment are:

1. Increased economic development potential for the local area to support employment and increased local investment
2. Greater potential viability of bed and breakfast accommodation development for Kyogle representing a compatible scale of tourist accommodation development for the area
3. Supplementary income streams for working rural properties capable of supporting complementary rural tourism
4. Better alignment with rural tourist accommodation provisions from other nearby local government areas in the region
5. Greater potential use of State complying development provisions for bed and breakfast accommodation providing improved flexibility and reduced red tape associated with approval processes

Part 2 – Explanation of Provisions

The proposed amendments to KLEP are summarised in Table 2 below.

Table 2 Summarised Amendments to Kyogle Local Environmental Plan 2012

Section of KLEP	Proposed Amendment
Part 2 Permitted or prohibited development Clause 2.1 Land use zones- Zone RU1 Primary Production	1) Amend RU1 Zone to include 'farmstay accommodation', 'camping grounds' and 'eco-tourist facilities' as development that is permissible with consent
Part 5 Miscellaneous provisions Clause 5.4 Controls relating to miscellaneous permissible uses	1) Replace existing Clause 5.4(1) Bed and breakfast accommodation of KLEP with the following words: "If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 5 bedrooms, subject to compliance with all other requirements of this Plan." Note: the notation to the sub-clause is not affected and is to remain. 2) Replace existing Clause 5.4(5) Farm stay accommodation with the following words: "If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of: a) No more than 5 bedrooms where forming part of the principal farm dwelling house; or b) No more than 1 separate cabin or chalet-style unit for each 10 hectares of the total land area of the allotment on which the development is to be located with no more than 12 bedrooms in total; and c) Subject to compliance with all other relevant requirements of the LEP"

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not a result of any specific strategic study or report addressing rural tourist accommodation within the Kyogle local government area or Far North Coast Region. The Planning Proposal is a result of the Council's ongoing implementation of its KLEP since its gazettal in 2012 and concern raised by the community in terms of inconsistencies between the KLEP, other LEPs of nearby councils, State complying development provisions and State economic development policy for the Region.

As the Council and community have progressively become more familiar with the implementation of the KLEP provisions, it has also become apparent that scope exists to rectify some of these inconsistencies while still making use of the Plan's other environmental controls to ensure that compatible and sustainable development results.

Kyogle is an area that is of increasing interest for people seeking rural and notably farm-based tourist accommodation and experiences as well as general admiration of its extensive natural (including World Heritage Area) and rural landscapes. The Council considered these and other issues as part of an internal (staff) report to Council – the recommendations of which were adopted unanimously by the councillors that were present at the Council's Ordinary Meeting (see Attachment A).

Rural businesses, of which farms represent a significant part within Kyogle, form a major component of Kyogle's economy. Rural production can be significantly seasonally influenced as well as being subject to market price fluctuations for farm commodities. Supplementary income streams can form a significant component of overall farm income and can influence the long term viability of farms and agricultural land. An alternative scenario confront farmland that is not economically sustainable can be smaller lot subdivision which can have long term adverse effects on overall agricultural productivity within an area.

Kyogle Council recognises the importance of maintaining quality agricultural lands as a long term strategic asset and that this may be achievable through other supplementary and compatible land uses, especially where there may be an emerging market demand. This principle also extends to the Council's urban and village areas. Low key tourist accommodation through bed and breakfast accommodation is generally considered to be compatible with the overall character of the area, its attractions which promote and facilitate family-based or individual road travel to different attractions. Bed and breakfast accommodation provides both an accommodation that is increasingly in demand and which, in principle, may more readily enable local and outside investment.

Anecdotal evidence from some of Australia's premier tourist destinations (e.g. Tasmania, Margaret River, Whitsundays Yarra Valley) shows that a mix between bed and breakfast/farm stay accommodation development, rural communities and agriculture can be very successful. Kyogle already has an existing economy of bed and breakfast accommodation and some farm stay. The proposed LEP Amendment is intended to strengthen this existing successful base while also supporting general agricultural activity.

The proposed inclusion of camping grounds as a permissible with consent use within the RU1 Zone is intended to recognise that land affected by the zone may be in close proximity to waterway, landscape or other natural features particularly along the periphery the zoned land and that this situation is not necessarily restricted to the RU2 – Rural Landscape Zone, being the only current non-urban or recreation zone within which a camping ground is permitted. Detailed controls already exist within the KLEP which ensure that appropriate environmental outcomes are maintained and would continue to apply to all camping grounds. This is to be further supplemented by making 'other development' provisions in sections 4.1 to 4.3, inclusively, apply to camping grounds. The provisions presently do not apply to camping grounds and include objectives for environmental protection and protection of agriculture and agricultural lands as well as detailed performance criteria and acceptable solutions for:

- Protection of good quality agricultural land
- Land use conflict
- Design and siting of buildings and structures
- Visual impact
- Environmental impact
- Protection of amenity of surrounding properties
- Effluent management

- Stormwater management
- Transport and access
- Services and infrastructure
- Natural hazards
- Heritage

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The intention is to specifically broaden low key and rural tourism opportunities within the Council's villages and rural areas through introducing a broader base of permissible uses in the RU1 Zone and making low key accommodation options potentially more viable. This is intended to be achieved through moderate increases in the number of people that can be accommodated any time.

The proposed changes are consistent with land use planning provisions elsewhere in the region which are regulated through LEP provisions. An LEP amendment is the only way by which the current situation can be changed.

3. Is there a net community benefit?

The Planning Proposal is intended to provide for greater economic diversity and employment potential for the Kyogle community through increased tourism potential and capacity to attract and accommodate visitors – notably from growing South East Queensland and 'Grey Nomad' market sectors. Additionally the increased potential for farm stay accommodation within the RU1 Zone is expected to provide additional on-farm based income generation capacity to supplement farm income. This latter aspect is expected particularly assist with overall farm and agricultural viability and reduce the potential for interest in other potentially incompatible land uses proliferating.

The increased potential for direct employment increase due to the Planning proposal is also expected to result in secondary employment benefits by supporting existing services and jobs or creating additional employment potential for those sectors that support tourism – e.g. retail services. The Planning Proposal also seeks to sustainably take advantage of the area's existing natural and rural landscape attractions without adverse environmental effects. This is to maximise economic and social benefits while maintaining Kyogle's sense of place and community character.

Section B – Relationship to the strategic planning framework

4. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The region is affected by the provisions of the:

- North Coast Regional Plan
- Far North Coast Regional Strategy

Relevant details of the provisions and the general compliance, or otherwise, of the Planning Proposal are discussed in the sections below.

North Coast Regional Plan

The *North Coast Regional Plan* (NCRP) is currently under review. The overall aims of the NCRP are:

- a) to develop regional policies that protect the natural environment, encourage an efficient and attractive built environment and guide development into a productive yet environmentally sound future,
- b) to consolidate and amend various existing policies applying to the region, make them more appropriate to regional needs and place them in an overall context of regional policy,
- c) to provide a basis for the co-ordination of activities related to growth in the region and encourage optimum economic and social benefit to the local community and visitors to the region, and
- d) to initiate a regional planning process that will serve as a framework for identifying priorities for further investigation to be carried out by the Department and other agencies

While the Planning Proposal is consistent with the general objectives of the NCRP, the Plan does not apply to land affected by KLEP under Clause 1.9 of KLEP.

Detailed objectives are provided for specific forms of development within the regional plan area. The planning

Far North Coast Regional Strategy

The *Far North Coast Regional Strategy* (FNCRS) identifies the region as a region of villages. The vision of the Strategy is:

A healthy, prosperous and sustainable future for the diverse communities of the Far North Coast Region.

The Planning Proposal builds on the local area's strengths including its rich rural diversity, low-intensity development character and abundant scenic attraction by encouraging additional and broadened compatible rural tourist accommodation. The scale and type of development that is addressed in the Planning Proposal is consistent with the key vision themes of the Strategy being:

Healthy and prosperous – the subject development is intended to provide greater potential economic prosperity for existing farm properties that wish to integrate low key tourist accommodation and provide farm stay experiences to visitors to the local area as well as provide for increased accommodation options for urban locations within Kyogle and associated increased economic activity due to visitors

Sustainable future – the Planning Proposal Promotes a balance between improved economic development and sustainable development through existing environmental controls contained in the KLEP and the application of other State environmental planning instruments

Diverse communities – the Planning proposal provides for greater lifestyle diversity for residents through additional business opportunities while also encouraging visitors to the area

The Planning Proposal is consistent with the intent and vision of the FNCRS.

5. Is the Planning Proposal consistent with the Council's Community Strategic Plan, or other local strategic plan?

Kyogle Community Strategic Plan

The Planning Proposal is consistent with the vision of the *Kyogle Community Strategic Plan 2012-2025* (Kyogle CSP) which is:

Working together to balance Environment, Lifestyle and Opportunity

Key issues and challenges that were identified in the Kyogle CSP included:

- Reversing the long term decline of population and achieving critical population size
- Reversing the decline in services in rural areas
- Need to support and protect agricultural industry
- Sustainable and appropriate development
- Villages in Kyogle Local Government Area are important and should be developed in line with what the people who live there want to see happen into the future

The fostering of the development of the tourism industry, within the Council area in order to promote economic growth and improved facilities; capitalisation of the close proximity to South East Queensland; and maintaining village community life were key desires of the community in the Kyogle CSP.

The Planning Proposal is expected to provide opportunity to encourage low key tourist development that is compatible with village and rural life and provide for greater economic diversity and opportunity while maintaining compatibility with the agriculture and the natural environment.

Sustainable Kyogle – An Economic Development Policy

The Kyogle Economic Development Policy was prepared in partnership with the NSW Department of Industry and Investment. Key objectives of the Policy, included:

- Strengthen our sense of community within Kyogle, our villages, and across the council area.
- Provide quality infrastructure and services (including in villages and rural areas) to support economic, and community development - roads, water, sewerage, electricity, telecommunications.
- Strengthen and broaden our economic base and level of business support services.
- Build on our traditional rural industries to ensure their economic future. Explore opportunities for new agricultural industries. Pursue value adding, and use new technologies.
- Plan to avoid conflicts between land uses.
- Improve public transport options.
- Create jobs that meet our needs and expectations, and increase participation.
- Provide relevant and accessible education options for jobs and for life.
- Support our volunteers to do the jobs they do best.
- Improve the health of our community. Ensure the delivery of health services reform results in more equitable and improved access to primary, preventative and community based care. Attract and retain medical and dental services, mental health services, and alternative therapy providers. Increase cultural, sporting, and recreational opportunities. Support our youth, and plan for future generations. Meet the needs of our aging residents, in town and in rural areas – provide options for aged care support and accommodation.
- Manage our population in consideration of our impacts on the natural environment, and the quality of life we want now and into the future.
- Maintain our scenic amenity, improve our management of the natural environment, and protect our biodiversity – it is of World Heritage significance.
- Work with our neighbours, including those in South East Queensland - but maintain our distinctiveness.
- Sustain our heritage both built and natural.

The Planning Proposal is consistent with the objectives for reasons already stated in this document.

6. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The relevant State Environmental Planning Policies that affect the planning proposal are summarised in Table 3.

Table 3 Summary of Planning Proposal Consistency with SEPPs

SEPP Title	Planning Proposal Consistency
State Environmental Planning Policy (State and Regional Development) 2011	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development.
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	Not applicable to Planning Proposal.
State Environmental Planning Policy (Urban Renewal) 2010	Not applicable to Planning Proposal.
State Environmental Planning Policy (Affordable Rental Housing) 2009	Not applicable to Planning Proposal.
State Environmental Planning Policy (Western Sydney Parklands) 2009	Not applicable to Planning Proposal.
SEPP (Exempt and Complying Development Codes) 2008	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development. The Planning Proposal will enable the full benefit of the complying development provisions applying to bed and breakfast accommodation to apply – i.e. development that consists of up to and including 4 bedrooms will, in principle, be able to be dealt with as complying development resulting in a further streamlining of the approval processes for this type of development in Kyogle.
State Environmental Planning Policy (Western Sydney Employment Area) 2009	Not applicable to Planning Proposal.
State Environmental Planning	The SEPP principles are:

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SEPP Title	Planning Proposal Consistency
Policy (Rural Lands) 2008	a) The promotion and protection of opportunities for current and potential productive and sustainable activities in rural areas. b) Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State. c) Recognition of the significance of rural land uses to the State and rural communities, including social and economic benefits of rural land use and development. d) In planning for rural lands, to balance the social, economic and environmental interests of the community. e) The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land. f) The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities. g) The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing. h) Ensuring consistency with any applicable regional strategy of the Department of Planning or any Applicable local strategy endorsed by the Director General. The Planning Proposal seeks to recognise the importance of agriculture to the local area, economically and socially and as a valued tourist resource. Additional tourist accommodation in rural areas is primarily intended to be associated with existing farm-based activities and is expected to have the potential of supplementing firm incomes. Enabling tourist development to take place on RU1 Zone land is expected to relieve pressure from development on non-farming land. Increased low key tourist development in Kyogle, including urban areas through potential increases in bed and breakfast accommodation is also expected to warrant the establishment of strengthening of existing services to support increased tourism.
State Environmental Planning Policy (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable to Planning Proposal.
State Environmental Planning Policy (Infrastructure) 2007	The Planning Proposal does not affect the ongoing operation of the SEPP on any referred to land or development. Development that is affected by the Planning Proposal does not constitute infrastructure that is dealt with by the SEPP. The potential provision of infrastructure by a public authority and operation of the SEPP over private land or adjacent to land that may be affected is not prejudiced by the Planning Proposal.
State Environmental Planning Policy (Temporary Structures) 2007	The SEPP provisions applying to temporary structures are not affected by the Planning Proposal.
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable to Planning Proposal.
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	Not applicable to Planning Proposal.

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SEPP Title	Planning Proposal Consistency
State Environmental Planning Policy (Major Development) 2005	Not applicable to Planning Proposal.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Any new structures will still need to comply with BASIX requirements as part of the development approval process.
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 71 - Coastal Protection	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development	Not applicable to Planning Proposal.
State Environmental Planning Policy 70 - Affordable Housing (Revised Schemes)	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 64 - Advertising and Signage	The SEPP provisions applying to advertising and signage are not affected by the Planning Proposal.
State Environmental Planning Policy No. 62 - Sustainable Aquaculture	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 59 - Central Western Sydney Regional Open Space and Residential	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 55 - Remediation of Land	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 52 - Farm Dams and Other Works in Land and Water Management Plan Areas	The SEPP provisions applying to farm dams and other works in land and water management plan areas are not affected by the Planning Proposal.
State Environmental Planning Policy No. 15 - Rural Land-Sharing Communities	The Planning Proposal will not circumvent or prejudice the establishment of rural land sharing communities.
State Environmental Planning Policy No. 50 - Canal Estate Development	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 47 - Moore Park Showground	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 44 - Koala Habitat Protection	The SEPP provisions applying to koala habitat protection are not affected by the Planning Proposal.
State Environmental Planning Policy No. 39 - Spit Island Bird Habitat	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 36 - Manufactured Home Estates	Not applicable to Planning Proposal.

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SEPP Title	Planning Proposal Consistency
State Environmental Planning Policy No. 21 - Caravan Parks	The SEPP provisions applying to caravan parks are not affected by the Planning Proposal.
State Environmental Planning Policy No. 33 - Hazardous and Offensive Development	
State Environmental Planning Policy No. 32 - Urban Consolidation (Redevelopment of Urban Land)	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 30 - Intensive Agriculture	The Planning Proposal does not affect the operation of the SEPP. Rural tourist accommodation options are generally not expected to be compatible with intensive agriculture establishments due to odour and other environmental conditions. Compatibility of proposed tourist accommodation is assessed as part of complying development criteria (e.g. for complying development bed and breakfast accommodation) and the KLEP. This includes impacts on and from intensive agriculture that may be from adjoining properties.
State Environmental Planning Policy No. 29 - Western Sydney Recreation Area	Not applicable to Planning Proposal.
State Environmental Planning Policy (Kurnell Peninsula) 1989	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 26 - Littoral Rainforests	Not applicable to Planning Proposal.
State Environmental Planning Policy (Penrith Lakes Scheme) 1989	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 19 - Bushland in Urban Areas	The SEPP provisions applying to bushland in urban areas are not affected by the Planning Proposal.
State Environmental Planning Policy No. 14 - Coastal Wetlands	Not applicable to Planning Proposal.
State Environmental Planning Policy No. 1 - Development Standards	Not applicable under Clause 1.9 of KLEP.

7. Is the Planning Proposal consistent with the applicable Ministerial Directions (Section 117 directions)?

The Section 117(2) Directions that affect the planning proposal and consistency of the overall proposed amendments are summarised in Table 4.

Table 4 Summary of Planning Proposal Consistency with s117 Directions

Section 117 Direction	Planning Proposal Consistency
1. Employment and Resources	
1.1 Business and Industrial Zones	The Direction affects business zones, including those that affect the Council's main centre in Kyogle and its village area. The Planning Proposal does not change the location of existing zones or propose any new zones. The planning Proposal is intended to help increase economic activity within

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Section 117 Direction	Planning Proposal Consistency
	the business zones through increased potential for tourist accommodation.
1.2 Rural Zones	This Direction requires that existing rural zones are not rezoned to a residential, business, industrial, village or tourist zone. The Planning proposal does not change any zones within the local government area.
1.3 Mining, Petroleum Production and Extractive Industries	The Direction does not apply to the Planning Proposal.
1.4 Oyster Aquaculture	The Direction does not apply to the Planning Proposal.
1.5 Rural Lands	The Direction affects rural zoned land. Any draft LEP must be consistent with the planning principles of the Rural Lands Sepp. The Planning Proposal does not prejudice existing rural development from proceeding. The Planning Proposal is intended to help supplement farm incomes where compatible rural tourist accommodation can be undertaken, notably in the form of bed and breakfast and farm stay accommodation.
2. Environment and Heritage	
2.1 Environment Protection Zones	The Planning proposal does not affect any existing Environmental Protection Zones.
2.2 Coastal Protection	The Direction does not apply to the Planning Proposal.
2.3 Heritage Conservation	The Planning Proposal does not affect State or existing KLEP heritage provisions. Existing provisions will still apply to any site or building that is affected by development that is, in principle, provided for by the Planning Proposal.
2.4 Recreation Vehicle Areas	The Direction does not apply to the Planning Proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	The Planning Proposal does not affect the existing operation of the Direction regarding residential development.
3.2 Caravan Parks and Manufactured Home Estates	The Planning Proposal does not affect the existing operation of the Direction regarding caravan parks and manufactured home estates.
3.3 Home Occupations	The Planning Proposal does not affect the provisions that relate to home occupations.
3.4 Integrating Land Use and Transport	The Planning Proposal does not affect the location of any existing or proposed zones or change existing transport choices.
3.5 Development Near Licensed Aerodromes	The Direction does not apply to the Planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	The Planning Proposal is unlikely to affect any acid sulfate soils. Kyogle is not known for the presence of acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	The Direction does not apply to the Planning proposal.
4.3 Flood Prone Land	Existing flood prone land provisions in KLEP are not affected by the Planning Proposal and will still apply to any proposed rural tourist development or town/village based bed and breakfast accommodation.
4.4 Planning for Bushfire	Existing bushfire protection provisions in KLEP are not affected by the

Section 117 Direction	Planning Proposal Consistency
Protection	Planning Proposal and will still apply to any proposed rural tourist development or town/village based bed and breakfast accommodation.
5. Regional Planning	
5.1 Implementation of Regional Strategies	The Planning Proposal is consistent with regional strategies that affect rural and tourist development.
5.2 Sydney Drinking Water Catchments	The Direction does not apply to the Planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	This Direction relates to State and Regional significant agricultural land and precludes the rezoning of such land or significant non-contiguous farmland for urban or rural residential purposes. The Planning Proposal does not rezone any land and is intended to support agricultural uses.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	The Direction does not apply to the Planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18/06/10)	The Direction does not apply to the Planning proposal.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	The Direction does not apply to the Planning proposal.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	The Direction does not apply to the Planning proposal.
5.8 Second Sydney Airport: Badgerys Creek	The Direction does not apply to the Planning proposal.
6. Local Plan Making	
6.1 Approval and Referral Requirements	The Planning Proposal does not alter any existing concurrence, consultation or referral requirements.
6.2 Reserving Land for Public Purposes	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	The Planning Proposal proposes to use existing standard zoning and general provisions within KLEP. No site specific provisions are proposed by the Planning Proposal.

Section C – Environmental, social and economic impacts

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitats will be affected by the Planning Proposal. The only additional development (i.e. fam stay accommodation and camping grounds) is proposed for the RU1 Zone and not any land that has been zoned for environmental or landscape amenity purposes.

Existing environmental management provisions in KLEP will still apply to any proposed development.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no other specific adverse environmental effects that are expected to result from the proposed development. Any impacts will be subject to either complying development criteria in the Exempt and Complying Development Sepp or the KLEP.

10. How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal is consistent with the Council's Community Strategic Plan and its economic development strategy. Rural activities and agriculture play a significant economic and social role in Kyogle forming the basis of much of its economy and non-urban landscapes. The Planning proposal intends to provide additional tourist development potential to help supplement farm incomes and to encourage increased tourist visitation to the area.

Section D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The Planning Proposal will facilitate low key tourist development that is largely based on existing urban and farm residences generally utilising existing infrastructure. The Council will apply its developer contributions requirements to any new development to help supplement any infrastructure upgrades that may be required. The additional development is expected to have secondary effects including strengthening the area's overall economy and land valuations. Any increase in unimproved land valuation can result in increased rate revenues for the Council which can be further invested into infrastructure for the area.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation will be undertaken with relevant agencies following the Gateway determination stage of the LEP amendment.

Part 4 – Mapping

The proposed LEP amendment does not require mapping amendments.

Part 5 – Community Consultation

Public comment will be sought during the public exhibition stage for the LEP amendment.

Part 6 – Project Timeline

The indicative timeline for the completion of the planning proposal is as shown in Table 5.

Table 5 Indicative Planning Proposal Timeline

Plan Making Step	Estimated Completion
Commencement of Gateway determination	10 August 2015.
Government agency consultation	To be as specified in the Gateway determination. The anticipated timeframe is 28 days and is expected to be undertaken concurrently with the public exhibition period.
Commencement and completion for public exhibition period.	Timeframe for public exhibition is 36 days. 31 August 2015 – 5 October 2015
Public hearings	Not applicable
Consideration of submissions	6 October 2015 – 30 October 2015
Further Consideration by Council	3 November 2015
Date of submission to the Department to finalise	4 November 2015
Anticipated date the Council makes the LEP, if delegated	To be determined
Anticipated date Council will forward making of the LEP to the Department for notification	To be determined

Attachments

Attachment A – Council Ordinary Meeting Minute – 13 July 2015.

TITLE PLANNING PROPOSAL TO AMEND THE KYOGLE LEP 2012 AND KYOGLE DCP TO PERMIT ADDITIONAL TOURIST AND VISITOR ACCOMMODATION

REPORT BY: PLANNING AND ENVIRONMENT

CONTACT: EXECUTIVE MANAGER PLANNING AND ENVIRONMENT MANFRED BOLDY

Summary/Purpose

The purpose of this report is to present to Council a proposed amendment to the *Kyogle Local Environmental Plan 2012* (KLEP) to permit additional tourist and visitor accommodation development opportunities within the RU1 Primary Production zone (RU1 Zone) and the RU2 Rural Landscape zone (RU2 Zone).

The proposed amendments are consistent with permissible land uses within the broader rural zones across other council areas and represent development that is likely to be particularly suited to Kyogle's economic development needs and opportunities.

Community Strategic Plan Item(s)

- Village Life
- Economic Development
- Environmental and Planning

The proposed amendment to the Council's planning provisions for rural tourist accommodation are consistent with the strategic intent of its Community Strategic Plan which is also supportive of its commitment as part of the NSW *Small Business Friendly Council's Program*, of which the Council is a participant.

Previous Council Consideration

Council previously considered this matter as part of its consideration of Item 13B.4 of its Ordinary Meeting on 9 December 2013 where it resolved:

1. *That Council receive and note the preliminary report to amend Kyogle Local Environmental Plan to permit eco-tourist facilities specified tourist and visitor accommodation and camping grounds in certain rural zones.*
2. *That Council investigate the application of (or need for both) Zones RU1 and RU2 as part of the planning proposal process that will be required following the completion of the E zone review.*

Background Information

Council has previously considered the need to review the tourist accommodations provisions that apply to its RU1 Zone in particular. At the time, the matter was deferred on the basis that the zoning was also relevant to the review of the State Government of the E Zones across the North Coast of New South Wales, including the Kyogle local government area (LGA).

The E Zone review considers a range of environmental issues that do not, in principle, affect the proposed LEP Amendment. Presently, the proposed E Zone areas are deferred from the Council's KLEP and do not represent a significant area compared to the remainder of RU1 and RU2 zoned land. Appropriate land use and permissibility allocations can be proposed at the time the E Zone areas are resolved by the State Government. In the event that these locations are to revert to one of the existing rural zones within the KLEP, the relevant development permissibility can be automatically transferred to the land with the new zoning.

A review of rural tourist accommodation opportunities for Kyogle is considered warranted at this stage since it will not prejudice the review of the E zone and it is likely to:

- 1) Ensure greater consistency across the region through more effective alignment of Kyogle's KLEP with other local government LEP provisions across the region
- 2) Potentially assist Kyogle in facilitating further sustainable economic development opportunities that are compatible with existing and future agriculture within the LGA
- 3) Provide scope for the area to better leverage off its existing economic and natural assets and proximity to existing and emerging tourist markets

Although the LEP amendment has the potential to facilitate significant economic benefits to Kyogle's rural areas, it represents a relative minor form of amendment (i.e. with no mapping changes required) and with only minor inclusions to the wording of the LEP document as well as corresponding amendments in the *Kyogle Development Control Plan 2014* (DCP).

Report

The following outlines some of the key points that relate to the proposed LEP Amendment. In addition a Planning Report for a Gateway determination by the State Government has been attached to this report and should be considered in association with this report.

1. Rural Tourism Opportunities in Kyogle

The growth of global populations, notably within nearby Asian regions is likely to result in not only a marked increase in demand for agricultural products but also tourism which is likely to increasingly include visits to rural areas and associated working farming communities. Proximity to large urban centres, such as Brisbane, are also likely to contribute to increased tourism demand both from within the urban centres but also through their gateway role for interstate and international tourists.

The scale of population increase is dramatic with estimates of the global population increasing to 9.6 billion people by 2050¹ from the existing population of approximately 7.2 billion people in 2014². The 2010 Intergenerational Report by the Australian Government, Department of Treasury estimated that the Australia's population would grow to almost 36 million³ people during the same period.

In addition to agricultural food production, many working agricultural areas also serve as an 'escape' for people from nearby urban areas and interstate and international tourists. Kyogle is located in relative close proximity to South East Queensland (SEQ), being less than 1 hour by road from the region's outskirts and approximately 2.5 hours from the capital centre – Brisbane.

Kyogle is also in close proximity to two international airports (Brisbane and Gold Coast) which can act as key entry points for interstate and international tourists, through linked coach charter or self-drive travel from the urban centres. The area is also well located for north-south and east-west road travellers with the Summerland Way-Mount Lindesay Highway and the Bruxner Highway respectively. The Kyogle Road is also an important route connecting to the Tweed coast and the Gold Coast.

The population of SEQ is already estimated to be 3.27 million⁴ persons with Brisbane estimated to account for 1.3 million of that figure in 2013. Population growth in the SEQ region is expected to reach 4.4 million people by 2031⁵.

The likely demand for visits to nearby rural areas, especially those that have added natural scenic attractions, is likely to significantly increase with population growth – including from nearby urban, regional and overseas locations.

¹ United Nations, 2014; http://www.un.org/apps/news/story.asp?NewsID=45165#.VZS_SnlxmUk

² United Nations, 2014; <http://www.un.org/en/development/desa/population/publications/pdf/trends/Concise%20Report%20on%20the%20World%20Population%20Situation%202014/en.pdf>

³ Australian Government, Treasury, 2010; http://archive.treasury.gov.au/igr/igr2010/Overview/pdf/IGR_2010_Overview.pdf

⁴ Queensland Government, 2015; <http://www.qgso.qld.gov.au/products/reports/pop-growth-highlights-trends-reg-qld/pop-growth-highlights-trends-reg-qld-2015.pdf>

⁵ Queensland Government, 2011; <http://www.qgso.qld.gov.au/products/reports/qld-govt-pop-proj-qld-sd/qld-govt-pop-proj-2056-qld-sd-2011.pdf>

Road travel is likely to continue to be a major potential source of visitors to the Kyogle. The Summerland Way – Mount Lindesay Highway route in particular forms part of a major route for 'grey nomad' travellers. Grey nomads, alone, form approximately 30% of the Australian domestic tourist market and form the largest sector of the tourist market for many Australian regions and individual locations.

The grey nomads form a large part (bulk) of the recreational vehicle (RV) market which includes the use of camper vans, caravans and mobile homes. The Campervan Motorhome Club of Australia (CMCoA) in its "2013 Snapshot – The Growth and Value of the RV Market – Key Facts"⁶ estimated that Australia had in excess of 500,000 registered RV vehicles during 2013 with a further 120,000 expected to be registered over the subsequent 5 years. CMCoA further estimated that the sector represented an approximate contribution of \$6.5 Billion to the Australian economy in 2013. The sector has consistently been the fastest growing domestic tourist sector nationally. Approximately 67% of the estimated 67.8 million site nights were spent in caravanning and camping sector in 2012 (i.e. 45.3 million) in caravan parks with 40 or more sites⁷.

Although RV based rural tourism is likely to have increased potential within Kyogle, there is also potential for increases in the amount and diversity of small-scale 'niche' accommodation through bed and breakfast and farm stay accommodation. This is particularly the case with an ever increasing market in SEQ.

While the Council recognises the potential for increased tourism in the area, the provisions of its LEP should reflect this strategic intent for its rural areas in a way that recognises the need for balance between the needs of the tourist markets (and the potential economic benefits to the area), sustainable agricultural production and environmental management outcomes. This should include contemporisation of its land use permissibility and development standards for rural-based tourist accommodation, including in light of other accepted approaches and demonstrated beneficial outcomes in some nearby and further afield areas.

Apart from supporting primary agricultural production on rural land, sustainably located rural tourist development can also help support other cultural activities in the area through the supporting arts and other cultural activities.

2. Existing Affected Rural Zones

Two rural zones in the KLEP are principally affected by the proposed LEP Amendment, being:

RU1 Primary Production – primarily intended as the principal agricultural zoning. The RU1 Zone represents a large part of the Kyogle LGA and significantly contributes to the area's landscape, social and economic character principally through the range of agricultural production that is undertaken on the affected land.

RU2 Rural Landscape – The RU2 Zone recognises the agricultural potential of affected land as well as the contribution to the natural and scenic landscape of the area. The RU2 Zone generally provides for a greater range of uses that are still compatible with a rural setting and rural uses that need not be directly related to rural activity in all instances (e.g. crematoria, certain forms of recreational activity and eco-tourist facilities).

There are a number of other rural Zones in the KLEP that would primarily be affected by proposed changes to the B&B provisions.:

RU4 Primary Production Small Lots – The RU4 Zone is intended to facilitate more intensive forms of agricultural production on smaller lots combined with rural lifestyle opportunities.

RU5 Village Zone – The Village Zone provides an engloba zoning for much of the areas occupied by the small villages and hamlets within the Kyogle LGA. The zone permits a mix of urban uses including, residential, retail, commercial and small scale industrial, as well as various tourist and visitor accommodation developments such as; camping grounds, caravan parks and hotel and motel accommodation.

RU3 Forestry Zone- The RU3 Forestry Zone is a specialist zone primarily for forestry and quarry purposes only under the LEP and is not included in this assessment of rural tourist accommodation opportunities.

⁶ Campervan Motorhome Club, 2013; <http://www.segra.com.au/segra13ConfProc/presentations/Day3-RVFuturesForum-GrowthAndValue.pdf>

⁷ Unsealed 4x4 Magazine, 2015; <http://www.unsealed4x4.com.au/just-big-rv-industry-australia/>

3. Existing Forms of Rural Tourist Accommodation and Standards

The KLEP provides for a range of tourist and visitor accommodation development that may be applicable to a rural setting within the Kyogle LGA. Development standards for the different forms of development vary across the Far North Coast Region and Australia generally. Such development, in the Kyogle LGA is regulated through building standards under the BCA and largely clause 5.4 of the KLEP.

The approach to the regulation of development standards for bed and breakfast accommodation facilities (B&Bs) and farm stay accommodation varies from council to council with some focusing on the number of permissible rooms, the number of occupants, permissible floor area or combinations thereof.

The different types of tourist accommodation and relevant standards that are applied within the Kyogle LGA are summarised as follows:

Camping grounds – This type of development represents the least intensive form of tourist accommodation for tents or temporary mobile forms of accommodation (e.g. camper vans) with communal facilities (e.g. for cooking, showers, toilets and lightweight shelters). It does not include a caravan park.

Development standards for camping grounds are generally applied through the *Local Government (Manufactured Home Estates, Caravan Parks and Camping Grounds) Regulation 2005* which includes development standards, and approval is also required under s68 of the *Local Government Act 1993* to operate a camping ground. .

The definition of a camping ground appears to be a legacy of a period from many decades ago. The definition stems reflects a time when caravans in particular were restricted to highways and accommodation parks characterised by a high level of service – e.g. water, power and even sewer connections. Changes in the quality, size and travel capability of recreational vehicles and the different forms of trailer accommodation has meant that there are increasing amounts of caravans and caravan-like vehicles that are able to be towed to more remote locations for camping purposes as a preferred substitute to tents by many people. This is not necessarily adequately reflected in the current definition of a camping ground within the LEP.

Camping grounds are permissible with consent in the RU2 and Village zones but not in the RU1 or RU4 zones.

Caravan parks – This can include a camping ground and cater for caravans and other moveable dwellings. It can also include the installation of prefabricated cabins. The development standards for caravan parks are generally applied through the Building Code of Australia (BCA) provisions.

Caravan parks are permissible in the Village zone but not any of the other rural zones (i.e. RU1, RU2 or RU4 zones).

Bed and breakfast accommodation – B&Bs are currently limited to principal dwelling houses with no more than 3 bedrooms only for B&B purposes. The premises must be occupied by the owners at all times. The use is permissible with consent in the RU1, RU2, RU4 and Village zones.

DCP restrictions presently apply to the length of stay (i.e. 'a maximum continuous period of 42 days with an interval of at least 14 days and no more than 100 days occupancy in any 12 month period'). Additional restrictions apply to the number of guests that can be accommodated at any time (i.e. no more than 12).

The operator of a B&B must be a permanent occupant of the premises at all times (i.e. no clear option for any separate management other than where the management coincides with residency at the same time).

B&Bs and farm stays have been in existence across Australia for many decades without any noticeable adverse impacts on rural areas or their supporting urban centres. The growth of many of the signature tourist locations across Australia shows that an increased number and diverse range of tourist accommodation options is, in more instances than not, likely to be complimentary and facilitating of tourism growth, visitor interest and result in a greater number of recurring visits to an area.

Modern housing design has surpassed the earlier 'standard' 3 bedroom design providing a more diverse range of design and sleeping accommodation options. Anecdotal demonstration of B&B markets across other prime B&B locations shows that successful regions include those that provide a range of accommodation options that tailor to the market's needs while also maintaining design and functional compatibility with the location and surrounding area.

The KLEP notes that an increase in the number of occupants may be a reason for the application of different building standards. The decision to escalate the level of applicable building standard should be as much a commercial decision as it is a statutory one, where such standards do not also introduce other planning considerations that cannot be effectively addressed (i.e. the application of building standards should not be used as a tool to regulate strategic land use decisions).

Farm stay accommodation – This development type is restricted to working farm properties only, by virtue of its definition; ‘

‘Farmstay accommodation means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production’.

While it can include B&B style accommodation, in principle, it also permits with consent, separate accommodation including cabin or other style accommodation provided there is a maximum of 3 bedrooms. The restriction on the number of bedrooms effectively makes the development of multi-bedroom cabins unfeasible.

Farm stays are permitted with consent in the RU2 and RU4 zones but not in the RU1 zone which forms the principal farming areas within the LGA by area and the number of working farming properties within the LGA.

The development standards for farm stay accommodation are similar to that of B&Bs (i.e. under KLEP and DCP) and similar design and market characteristic comments apply.

Eco-tourist facilities – This form of development is only permitted in the RU2 and Village zones (i.e. included in the ‘tourist and visitor accommodation’ definition as permissible use with consent within the Village Zone). The development is not permitted in the RU1 or RU4 zones. The likely scale of such development is expected to make it incompatible with the scale of other development and lot sizes in the RU4 Zone.

The restrictions are likely to unduly limit opportunity to locate such facilities on RU1 zoned land that may include or be located adjacent to other land that has significant ecological value or attraction and that may be suitable educational or personal recreational/well-being purposes for visitors who may also prefer accommodation within proximity to such features to enhance convenience and the overall experience.

The development standards for this form of development are referred to in Clause 5.13 of the KLEP. Apart from being required to comply with general standards and requirements regarding compatibility with the general environment and need for appropriate services, design and other standards are also dealt with through general provisions in the DCP and BCA related matters.

Eco-tourist facilities, in principle, potentially have the least restriction over built form options and can include free-standing units or multiple unit accommodation designs as well as more basic accommodation (e.g. tent cabins).

Hotel and motel accommodation – This form of development is, appropriately, restricted to urban areas including the Kyogle town area and village centres (i.e. included as part of ‘tourist and visitor accommodation’ definition). There is no demonstrated need for any such facilities outside of these areas.

Development standards for this form of development are primarily BCA related.

4. Other Forms of Tourist Accommodation

A range of other forms of tourist accommodation, that does not include hotels and motel accommodation, may also, in principle, be permitted in rural zoned locations. This can include cabins and ‘chalets’ (i.e. often regarded as a more permanent form of detached development). Cabins may also form a part of a caravan park. Cabins and chalets may also form a part of a farm stay. Associated and Ancillary Development

Associated and ancillary forms of development that may support or compliment tourist accommodation, include eating establishments such as restaurants and cafes, function centres and interpretative facilities. Eating facilities that are for guests only are generally regarded as ancillary and are considered to be a part of the principal guest accommodation development. Facilities that intend to cater for people other than those that are accommodated guests are not ancillary development and are regarded as separate development.

Presently, restaurants, cafes and function centres are permitted with development consent in the RU2, RU5 and Village zones but not in the RU1 zone. This approach, applied to other premier rural tourist destinations in Australia (e.g. many of the viticulture and wine districts), would have precluded some of the country's most well-known restaurants from establishing or being operated.

The need, or otherwise, for function facilities within the RU1 Zone is a matter that is unlikely to be the same as the potential for additional accommodation and supporting eating facilities and can be further investigated on a case-by-case basis through individual request to amend the LEP, or could be considered as part of a future Council initiated LEP amendment.

Comparison with other Council Locations

A comparison of permissibility, or otherwise and key development standards between Kyogle and other locations is provided in Table 6.

Table 6 - Rural Tourist Accommodation Comparison with other Regional Agriculture/Tourist Locations

	Kyogle	Lismore	Byron Bay	Richmond Valley	Bega Valley	Margaret River, WA	Whitsundays Qld
Camping areas	Not permitted in RU1; permitted in RU2 zones	Permitted in RU1 and other rural zones	Permitted in RU1 and other rural zones	Permitted in RU1; no other large area rural zone applies to council area	Permitted in RU1 and other rural zones	Not permitted in General Agriculture and Priority Agriculture zones; specific tourist zones apply including for camping	Not preferred in Rural Zone; specific tourist zones apply
Caravan parks	Not permitted in RU1; permitted in RU2 zones	Permitted in RU1 and other rural zones	Not permitted in RU1; permitted in small rural village zones and other urban zones	Permitted in RU1; no other large area rural zone applies to council area	Not permitted in RU1; permitted in small rural village zones and other urban zones	Not permitted in General Agriculture and Priority Agriculture zones; specific tourist zones apply including for caravans	Not preferred in Rural Zone; specific tourist zones apply
Bed and breakfast	Permitted in RU1 and other rural zones and urban zones; 3 br. max	Permitted in RU1 and other rural zones and urban zones; 5 br. max	Permitted in RU1 and other rural zones and urban zones; 2 br. max	Permitted in RU1; no other large area rural zone applies to council area; 3 br. max	Permitted in RU1 and other rural zones and urban zones; 4 br. max	Permitted in General Agriculture and Priority Agriculture zones; 2 br. max	Permitted in Rural Zone; 5 br. max
Farm stay	Not permitted in RU1; permitted in RU2 zones; 3 br. max	Permitted in RU1 and RU2 zones; 5 br. max	Permitted in RU1 and RU2 zones; 12 br. max	Permitted in RU1; no other large area rural zone applies to council area; 10 br.	Permitted in RU1 and RU2 zones; 6 br. max	Farm stays not identified – included as 'guest house' which is permitted in	Farm stay included in definition of 'bed and breakfast'

Proposed Amendment to the Kyogle Local Environmental Plan 2012
Amendment No. 4 – Rural Tourist Accommodation

	Kyogle	Lismore	Byron Bay	Richmond Valley	Bega Valley	Margaret River, WA	Whitsundays Qld
				max		General Agriculture and Priority Agriculture zones; 4 br. Max for less than 20 ha. or 12 br. for 20 ha or greater	
Eco-tourist facility	Not permitted in RU1; permitted in RU2; no specific density standards	Permitted in RU1 and RU2 zones; no specific density standards	Not permitted in RU1; permitted in RU2; no specific density standards	Permitted in RU1; no other large area rural zone applies to council area	Not permitted in RU1; permitted in RU2; no specific density standards	Included in definition of guest house or other tourist facilities; generally not permitted in Agriculture zones; specific tourist zones apply for this form of development	Generally included in definition of integrated resort; not preferred in Rural Zone; specific tourist zones apply
Hotels and motels	Not permitted in RU1 or RU2 zones	Not permitted in RU1 or RU2 zones	Not permitted in RU1 or RU2 zones	Not permitted in RU1 Zone	Not permitted in RU1 or RU2 zones	Not permitted in Agriculture zones	Not preferred in Rural Zone; urban and tourist zones apply
Restaurants and cafes	Not permitted in RU1 Zone; permitted in RU2 Zone	Permitted in RU1 and RU2 zones	Permitted in RU1 and RU2 zones	Permitted in RU1; no other large area rural zone applies to council area	Permitted in RU1 and RU2 zones	Permitted in Agriculture zones	Not preferred in Rural Zone; urban and tourist zones apply
Function centres	Not permitted in RU1 Zone; permitted in RU2 Zone	Not specifically permitted in RU1 or RU2 zones	Not permitted in RU1 or RU2 zones	Not permitted in RU1 Zone	Permitted in RU1 and RU2 zones	Permitted in Agriculture zones	Not preferred in Rural Zone; urban and tourist zones apply

5. Exempt and Complying Development

The *State Environmental Planning Policy (Exempt and Complying Development) Codes 2008* include development that is either exempt or complying development, notwithstanding any other provisions that may be contained within an LEP. The exemptions include minor alterations or additions to buildings, outdoor recreation features, fencing and some signage.

Complying development provisions exist for certain minor works and variations to buildings and other structures, including variations for heights and setbacks for buildings, landscaping car parking, earthworks and site requirements. Specific provisions apply to B&B development with no more than 4 guest bedrooms (i.e. B&Bs with up to 4 guest bedrooms may be complying development – requiring no development consent, subject to other provisions).

6. E Zone Review

The Department of Planning and Environment notes, on its webpage, that the Environmental Zone (E Zone) Review is being conducted by consultants. The review applies to E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living zones in the Ballina, Byron, Lismore, Tweed and Kyogle local government areas. The review was initiated to inform planning decisions on the application of environmental zones on the Far North Coast so that a balance is achieved between allowing agriculture and rural uses to continue while protecting important environmental values.

Pending the outcome of this review, areas with environmental zones and overlays are being deferred as councils proceed with their local environmental plans (LEPs). The current zoning of the land will continue to apply to these deferred areas.

The extent of affected areas in the Kyogle LGA is minor compared to the overall area of other rural (i.e. non-urban) land. The continuation of E zoned land and its formal inclusion in the KLEP is not expected to adversely or affect the use of other rural zoned land or prejudice, in principle, its use for tourist accommodation purposes, subject to compliance with other development controls in the LEP and DCP. In the event that the E zones were to revert to an existing rural zoning, the provisions of that zone would also automatically apply once the zone is confirmed through an amendment of the KLEP zone maps.

Based on the above, it is considered that deferment of any necessary LEP amendments that do not necessarily compromise the outcomes of the E Zone Review is not warranted and should not unduly impede the Council's proper planning for its area including strategic and economic development planning and preparation of supporting statutory frameworks.

7. Description of Proposed Amendments to KLEP

While it would be preferable to have other sections of the KLEP amended to bring it more in line with current tourist practices, tourism accommodation and expectations, restrictions regarding the content of the LEP which are based on the State's standard LEP format, make this impractical at this stage. This particularly applies to the dictionary definitions of different forms of development – e.g. definition of camping grounds and caravan parks and references to cabins and chalets.

Regardless of the above, there are a number of amendments which can be undertaken to better align the KLEP with other LEPs in the region and, in principle, more effectively facilitate the Council's economic development objectives for its area.

The proposed amendments to the KLEP are summarised as follows:

- 1) Amend RU1 Zone to include 'farmstay accommodation', 'camping grounds' and 'eco-tourist facilities' as development that is permissible with consent
- 2) Amend Clause 5.4(1) of KLEP (i.e. in reference to B&B development) to state that "the accommodation that is provided to guests must consist of no more than 5 bedrooms, subject to compliance with all other requirements of the LEP
- 3) Amend Clause 5.4(5) of KLEP (i.e. in reference to farm stay development) to state that:
"The accommodation that is provided to guests must consist of:
 - a. No more than 5 bedrooms where forming part of the principal farm dwelling house; or

- b. *No more than 1 separate cabin or chalet-style unit for each 10 hectares of the total land area of the allotment on which the development is to be located with no more than 12 bedrooms in total; and*
- c. *Subject to compliance with all other relevant requirements of the LEP”*

There are no changes proposed to the mapping of the KLEP.

8. Objectives of Proposed KLEP Amendments

The proposed amendments to the KLEP are intended to:

- Better align the Council's planning controls for rural tourist accommodation with the existing complying development provisions (i.e. the state provisions already permit more bedrooms than the KLEP in many instances)
- Provide for more responsive recognition of commercial requirements for the provision and operation of rural tourist accommodation opportunities in the area
- Provide incentive for quality design and service delivery
- Provide, in principle, for greater tourist accommodation diversity and experiences
- Maintain complimentary land use objectives between tourist accommodation and agricultural production opportunities
- Ensure that best-practice sustainable development and environmental management practices are maintained

9. Description of Proposed Amendments to Kyogle Development Control 2014

At present, the general provisions under Part 4 of Chapter 1 do not apply to 'tourist and visitor accommodation', eco-tourist facilities and camping grounds. Specific provisions for B&B and farm stay development are contained in *Chapter 9 Bed and Breakfast Accommodation and Farm Stay Accommodation*.

DCP Chapter 9 - Sections 2.1 and 3.1

Sections 2.1 and 3.1 for B&Bs and farm stays respectively in the DCP identifies temporary and short term accommodation as generally considered to comprise:

- 1) A maximum continuous period of occupancy for guests of 42 days with an interval of at least 14 days between stays and;
- 2) A total of not more than 100 days occupancy in any 12 month period.

The provision is likely to be unduly restrictive in that it limits the total occupancy period of any establishment to no more than 100/365 days (i.e. 27.4%) for any given year. This may represent a potentially inadequate return on investment for tourist accommodation operations and may serve as a deterrent for this form of development which may otherwise have significant benefits to the area, provided all other development control concerns can be addressed.

Part 1 of the Section 2.1 and 3.1 requirements are also potentially difficult to interpret and to enforce by the Council and can be just effectively substituted with plainer English.

It is recommended that Sections 2.1 and 3.1 be replaced with the following:

Temporary or short stay accommodation is generally considered to comprise accommodation that:

1. *Is advertised to the general public; and*
2. *Involves the making of a booking for guests and involves a payment for bed and breakfast accommodation services and facilities; and*
3. *Is only short term and temporary for any guest – i.e. the duration is irregular or intermittent and is generally less than a 1 month period*

DCP Chapter 9 - Section 2.4 Development Guidelines (Bed and Breakfast Accommodation)

Performance criteria P2 of the table contained in the section requires that:

“The principal function of the building is a dwelling house for use by a single household group”

The current acceptable solutions for the P2 performance criterion are:

- A2.1 Accommodation for guests is located within an existing dwelling house
- A2.2 Development provides a maximum 3 bedrooms for accommodation of guests
- A2.3 Development provides accommodation for no more than 12 guests

The following changes to Section 2.4 of the DCP are proposed:

- 1) Acceptable solutions for the P2 performance criterion is replaced with the following:

- A2.1 *Accommodation for guests is located within an existing dwelling house – this can include attached or separated rooms provided that such rooms are attached to a central common dwelling area with weatherproof access*
- A2.2 *Development provides a maximum 5 bedrooms accommodation of guests*
- A2.3 *Bedrooms may include spas and ensuite facilities but do not include facilities for the cooking of any meals – all meals on the premises are to be solely provided within common eating areas*
- A2.4 *Development provides for no more than 12 guests*

The proposed provisions maintain the indicative number of maximum guests while providing greater flexibility in dwelling design and accommodation of couples or separate guests – all of which are intended to facilitate greater B&B diversity including establishment of ‘niche’ market premises.

The existing performance criteria and acceptable solutions are proposed to remain the same within the table contained in section 2.4 of the DCP other than the acceptable solutions identified above.

DCP Chapter 9, Section 3.3 Development Guidelines (Farm Stay Accommodation)

Performance criteria P1 of the table contained in the section requires that:

“The farm stay accommodation business is secondary to the agricultural enterprise of the property”

The current acceptable solutions for the P1 performance criterion are:

- A1.1 No more than 3 bedrooms are provided for accommodation of guests
- A1.2 Accommodation is not provided for more than 12 guests

The following changes to Section 3.3 of the DCP are proposed:

- 1) Performance criteria P1 is to be amended to read:

- P1 The farm stay accommodation business is, at all times, to be operated in conjunction with an agricultural enterprise on the property that forms the intended dominant use of the land*

- 2) The acceptable solutions for performance criterion P1 are to be replaced with the following:

- A2.1 *Guest accommodation consists of:*
 - a) *No more than 5 bedrooms where forming part of the principal farm dwelling house; or*
 - b) *No more than 1 separate cabin or chalet-style unit for each 10 hectares of the total land area of the allotment on which the development is to be located, with no more than 12 bedrooms in total; and*
 - c) *An overall total of no more than Subject to compliance with all other relevant requirements of the LEP”*
- A2.1 *Guest accommodation within the principal dwelling consists of:*

- a) *No more than 5 bedrooms – this can include attached or separated rooms provided that such rooms are attached to a central common dwelling area with weatherproof access; and*
- A2.2 *No more than 1 separate cabin or chalet-style unit for each 10 hectares of the total land area of the allotment on which the development is to be located, and*
- A2.3 *The overall development for guest accommodation, including that which part of the principal dwelling or separate cabins or chalets has no more than 12 bedrooms in total; and*
- A2.3 *Bedrooms may include spas and ensuite facilities but do not include facilities for the cooking of any meals – all meals on the premises are to be solely provided within common eating areas*

Section 4.1 to 4.3 inclusively

Section 4.1 to 4.3, inclusively, of Part 4 of Chapter 1 is to apply to camping grounds as no such provisions currently exist. This is to provide an appropriate local environmental assessment framework for the assessment of such development.

There are no other changes that affect general or specific provisions affecting farm stay accommodation as contained in the DCP.

Conclusion

The proposed changes to rural tourist accommodation in rural zoned land and the accompanying amendments to the DCP provisions, in principle, provide for a greater diversity of accommodation design and guest/visitor experience that is compatible with surrounding agriculture and the environmental qualities of the location. While the proposed amendments have the potential to complement existing agriculture activity and help support economic development and growth within the Kyogle local government area, any such development will still be required to undergo thorough development assessment requirements to demonstrate general land use, environmental and infrastructure/services compatibility, based on other existing requirements within the Council's KLEP and DCP.

Budget & Financial Aspects

There are no major Budget implications for the proposed LEP and DCP amendments. The proposed amendments are to be undertaken utilising existing Council staff resources only and will fall within existing staff and administrative budget allocations.

Recommendation

1. That Council receives and notes the report on PLANNING PROPOSAL TO AMEND THE KYOGLE LEP 2012 AND KYOGLE DCP TO PERMIT ADDITIONAL TOURIST AND VISITOR ACCOMMODATION
2. That Council resolves to amend the *Kyogle LEP 2012* (KLEP), through the preparation of a Planning Proposal generally in accordance with the changes outlined in section 10 of this Report.
3. That Council authorise the Acting General Manager to finalise the Planning Proposal consistent with the contents of the report to Council and submit the Planning Proposal to the Department of Planning and Environment (the Department) for review and Gateway Determination.
4. That on receipt of a Gateway Determination to proceed with the LEP amendment, the Acting General Manager be authorised to make any necessary changes to the Planning Proposal in accordance with the requirements of the Department and proceed with the LEP amendment process in accordance with the provisions of Part 3 Division 4 of the EPAA, including public consultation of the LEP amendment.
5. That a further report is presented to the Council regarding the review of submissions resulting from the public consultation phase, should the LEP amendment be enabled to proceed through a favourable Gateway Determination.
6. That the Council prepare a draft development control plan generally in accordance with the changes outlined in Section 10 of this Report.

7. That public exhibition of the Draft DCP is carried out in accordance with the requirements of the EP&A Reg. 2000.
8. That the draft DCP is to be reviewed in light of any submissions made during public exhibition.
9. That a further report is to be presented to the Council following conclusion of the public consultation stage and consideration of any submissions that have been received.

Division

Under section 375A of the *Local Government Act 1993*, a division is required to be called to record that manner in which all councillors have voted whenever a planning decision is to be made in relation to a development application, planning instrument or development control plan. The section of the Act applies to a Council decision regarding the matter referred to in this report.

RESOLVED

Moved by Councillor Ross Brown, seconded by Councillor Maggie Creedy:

1. That Council receives and notes the report on Planning Proposal To Amend The Kyogle LEP 2012 And Kyogle DCP To Permit Additional Tourist And Visitor Accommodation;
2. That Council resolves to amend the *Kyogle LEP 2012* (KLEP), through the preparation of a Planning Proposal generally in accordance with the changes outlined in section 10 of this Report;
3. That Council authorise the Acting General Manager to finalise the Planning Proposal consistent with the contents of the report to Council and submit the Planning Proposal to the Department of Planning and Environment (the Department) for review and Gateway Determination;
4. That on receipt of a Gateway Determination to proceed with the LEP amendment, the Acting General Manager be authorised to make any necessary changes to the Planning Proposal in accordance with the requirements of the Department and proceed with the LEP amendment process in accordance with the provisions of Part 3 Division 4 of the EPAA, including public consultation of the LEP amendment;
5. That a further report is presented to the Council regarding the review of submissions resulting from the public consultation phase, should the LEP amendment be enabled to proceed through a favourable Gateway Determination;
6. That the Council prepare a draft development control plan generally in accordance with the changes outlined in Section 10 of this Report;
7. That public exhibition of the Draft DCP is carried out in accordance with the requirements of the EP&A Reg. 2000;
8. That the draft DCP is to be reviewed in light of any submissions made during public exhibition;
9. That a further report is to be presented to the Council following conclusion of the public consultation stage and consideration of any submissions that have been received.

CARRIED

FOR VOTE - Unanimous vote

ABSENT. DID NOT VOTE - John Burley

Proposed Amendment to the Kyogle Local Environmental Plan 2012
Amendment No. 4 – Rural Tourist Accommodation

Division

Councillors Lindsay Passfield and Ross Brown called for a Division under section 375A of the *Local Government Act 1993*.

For	Against
Cr Robert Dwyer	
Cr Maggie Creedy	
Cr Janet Wilson	
Cr Chris Simpson	
Cr Ross Brown	
Cr Lindsay Passfield	
Cr Michael Reardon	
Cr Danielle Mulholland	